BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

VIRGINIA LEA	VERTON)	
C	laimant)	
VS.)	
)	Docket No. 251,786
STORMONT V	AIL REGIONAL MEDICAL)	
CENTER)	
R	espondent)	
S	elf-Insured)	

ORDER

Claimant appeals the May 24, 2000, preliminary hearing Order of Administrative Law Judge Brad E. Avery. In the Order, the Administrative Law Judge denied claimant benefits, finding her accidental injury did not arise out of and in the course of her employment with respondent. Those are the only issues presented for the Board's consideration at this time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant, a long-term employee of Stormont Vail Regional Medical Center, left work on February 2, 2000, at approximately 4:30 p.m. She proceeded east across the intersection of 10th and Washburn. She then turned south to cross 10th Street. While in the crosswalk, she was struck by an automobile and severely injured. The Administrative Law Judge found that claimant did not prove that the intersection met the "special hazard" exception to the going and coming rule of K.S.A. 1999 Supp. 44-508(f). The Administrative Law Judge stated that the intersection in question "was in general use by the public."

The Administrative Law Judge and the parties rely on <u>Chapman v. Beech Aircraft Corp.</u>, 258 Kan. 653, 907 P.2d 828 (1995). In <u>Chapman</u>, the claimant left the respondent's parking lot and crossed Central Street, heading towards the Beech Aircraft plant, when she was struck by a car. The Kansas Supreme Court found the special hazard exception of the going and coming rule of K.S.A. 44-508(f) to apply in that instance. The Supreme Court held that vehicle traffic may constitute a special hazard, depending upon the circumstances. Central Street was a very busy street in Wichita, and for the claimant to cross Central Street at that location constituted a special risk or hazard. In this instance, the intersection of 10th and Washburn, while being a fairly heavily traveled intersection, is, in most ways, very similar to many intersections in the city of Topeka. It has both

crossing lanes and traffic lights to control the traffic. At the time claimant was injured, she was crossing in the crossing lane and walking with the light.

A significant distinction between <u>Chapman</u> and the case at hand is that, in <u>Chapman</u>, the evidence convinced the Supreme Court that the route being used by the claimant was only used by company employees or persons dealing with the employer. In this instance, claimant acknowledged the intersection of 10th and Washburn and the crosswalk in which she was injured are regularly utilized by many Topeka citizens and other persons not doing business with the respondent. Located at that same intersection is the Topeka Public Library, a chiropractor's office and down the street are several medical and office buildings not connected to respondent hospital.

Finally, the <u>Chapman</u> accident occurred in January at approximately 6:40 in the morning when, as the Supreme Court noted, it would be dark. Here, claimant was injured at approximately 4:30 in the afternoon on February 2, when it would still be daylight.

After considering all the facts, the Appeals Board finds that claimant has not proven that she suffered accidental injury arising out of and in the course of her employment with respondent and that the Order Denying Compensation of Administrative Law Judge Brad E. Avery dated May 24, 2000, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated May 24, 2000, denying compensation to the claimant for the injury of February 2, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this day of July 2000

BOARD MEMBER

c: Frederick J. Patton, II, Topeka, KS James C. Wright, Topeka, KS Brad E. Avery, Administrative Law Judge Philip S. Harness, Director